



CONSTITUTIONAL PROVISION FOR DISABLED PERSONS IN INDIA

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DOI - 10.5281/zenodo.7219846

Introduction:

Experts in the field interpret the complicated issues like Equality, Disability in different way in different context. In society, physical, and mental are two types of disabilities found in broader sense. The persons with disability, either mental or physical, is treated as inferior to other persons in society. As such, the weakest group in our society is the physical or mentally disabled person, which is now called as the differently abled persons. The Indian Constitution gives assurance and protects rights of all citizens along with the differently abled persons. The constitution expects and suggests that the government should protect rights of this 'Divyang' persons which is the important section of the society and needs special attention by the government. The aim of the government should be to make an 'inclusive society' where differently abled persons can have their rights without being treated as disabled.

The Constitution of India is a product of long tradition. It is also a work of scholarly persons involved in the freedom movement of the country. The aspirations of all freedom fighters and makers of the nation are reflected in our constitution. In fact, it can be said that the constitution is outcome of our freedom

movement which is reflection of diversity of Indian society as it has come out from the background and serious thinking of great broad-minded national leaders who know Indian people and their mindset. Understanding of the common man country is well reflected in the constitution and therefore the meaning of freedom in true sense to him in formation of the Constitution was necessary. Therefore, the constitution makers formed a special protective group of women, children, disabled, religious minority, SCs and STs. The social acceptance of civil society in India that these groups need special treatment with more efforts for their all-round social, economic enrichment, and cultural growth. For this purpose, special provisions were made in the Constitution for groups of disabled. This view of the Constitution makers reflects in special directive principals and fundamental rights given in the constitution.

The Indian Constitution has seven fundamental rights (under Part III Article 12 -35) for all Indian citizens. These fundamental rights are applicable to all citizens equally and uniformly. The constitution makes no discrimination about these fundamental rights and all legal citizens of the country can enjoy these. The fundamental rights are: 'The Right of Equality, Right to Freedom, Right against

Exploitation, Right to freedom of Religion, Cultural and Educational Rights, Right to Constitutional Remedies'. The constitutional protection of all Divyang person about fundamental right is an important step for inclusive society. discriminated on the grounds of physical disability.

Status of Differently Abled Persons:

Disabled persons are one of the under privileged persons from among the protective groups. Even though disability is major challenge for humanity it is taken as sin or curse of previous life in Indian society. Inclusive society is the ideal society where every care for the differently abled persons is taken so that they can live without much dependency and with honor. However, to create and inclusive society, everyone must accept that the disabled persons are also integral part of the society and it is mandatory for every civil society to create an environment in such a way

that every disabled person should enjoy all facilities that are available for other members of the society.

Disability in India:

During the national Census, 2011 the data about disability was collected. It was collected on eight types of disabilities like 1. in seeing, 2. in hearing, 3. in speech, 4. in movement, 5. mental retardation, 6. mental illness, 7. any other, 8. multiple disability. It was as enumerated and described in the "Persons with Disabilities Act, 1995" and "The National Trust Act, 1999".

Types of Disability:

Government of India has recognized various types of disabilities and accordingly reflected in the Census 2011. The census workers were given special training for the purpose so as to get quality data

Table 1: Disabled Population by Type of Disability India: 2011

Type of Disability	Males (%)	Females (%)	Total (%)
In Seeing	26,38,516 (17.6)	23,93,947 (20.2)	50,32,463 (18.8)
In Hearing	26,77,544 (17.9)	23,93,463 (20.2)	50,71,007 (18.9)
In Speech	11,22,896 (7.5)	8,75,639 (7.4)	19,98,535 (7.5)
In Movement	33,70,374 (22.5)	2,066,230 (17.5)	5,436,604 (20.3)
Mental Retardation	8,70,708 (5.8)	6,34,916 (5.4)	1,50,56,24 (5.6)
Mental Illness	4,15,732 (2.8)	3,07,094 (2.6)	7,22,826 (2.7)
Any Other	27,27,828 (18.2)	21,99,183 (18.6)	49,27,011(18.4)
Multiple Disability	11,62,604 (7.8)	9,53,883 (8.1)	21,16,487 (7.9)
Total	1,49,86,202 (100)	1,18,24,355 (100)	2,68,10,557 (100)

Constitutional provisions for Differently Abled Persons:

The above table shows that in 2011 India had 2,68,10,557 differently abled persons. Differently abled persons in the

society needs more attention so as to form inclusive society where every single person of each group has equal right not only on paper but in practical life also. Therefore our Constitution has made

provisions that the rights given to legal citizens applies to all. Constitutionally there is no discrimination on the basis of caste, gender, language, religion, healthy or disabled in any manner (physically or mentally). Under the Constitution of India, the disabled have been guaranteed the fundamental rights. It also assures to all Indian citizens a right of justice, liberty of thought, expression, belief, faith and worship, equality of status and of opportunity and for the promotion of fraternity. All these rights are equally applicable to persons with different ability also.

Article 15(1) of the Constitution says that the Government should not discriminate against any citizen of India, including ‘Divyang’ persons, based on religion, race, caste, sex, or birthplace. Further, the Article 15(2) mentions that no citizen, whether with the disability should not be prevented to have access to shops, restaurants, hotels and places of public entertainment like gardens, etc maintained fully or partly by the government funds or reserved and devoted to the use of the general public. Similarly, equal opportunity should be given to all citizens (including the disabled) for preference in employment or appointment in any government office.

The Constitution gives assurance of life and liberty of every individual which includes the disabled person under Article 21. Under the constitution for differently abled persons no one in this country can discriminate about employment, enrolling as voter, possessing property, call for justice into the Supreme Court, enjoy freedom of religion and other rights mentioned in the constitution.

Educational Laws and Disabled Persons:

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The right to get oneself educated has been given to all citizens involving the disabled. Article 29(2) of the Constitution. The article reveals that in institutes funded by the state:

- Admission cannot be refused on the basis of caste religion or race (including disability)
- Government should make free and compulsory education to all (including disabled)
- State can not discriminate disabled in facilities related to health and labour legislation.

Income Tax and Disabled Persons:

- U/s 80 DD calls for a deduction on the medical treatment.
- the limit of the deduction has been increased from Rs.12,000/- to Rs.20,000/-.
- A new section 80V has been added entitled to claim a deduction up to Rs.20,000/-

Constitutional Set Up:

To protect rights, monitor and establish the justice for the disabled persons government has formed an “Office of the Commissioner for the persons with Disability” <http://www.ccdisabilities.nic.in> Also all states have state commissions in place.

Decisions of the Commission:

1. Shri Surjeet Chanda, Vs IDBI Bank Ltd¹

Shri Surjeet Chanda got transfer n the basis of the 40% locomotor disability when he had an accident based on special privileges for disabled persons.

¹ Case No 9914/1022/2018

2. Ms. Bushra Sabir, Vs Delhi University Dept of Ayurveda & Unani Medicine²

The complainant secured admission in Ayurveda College as there cannot be discrimination about disabled persons

Court Decisions:

1. Union of India v National Federation of the Blind³

In this case Hon Court has asked to 'ensure 5 per cent of representation in the entire workforce both in public as well as private sector' for the blind persons in all establishments.

2. Government of India v Ravi Prakash Gupta⁴

In this case, the respondent was a visually challenged person who appeared for the civil services.

Examination the court asked to keep some definite posts reserved for visually challenged persons if found necessary.

3. Bhagwan Dass and Anr v. Punjab State Electricity Board⁵

In this case the applicant became blind in due course of service period and the management could not provide him proper work and asked him to resign. But the court decision was asked to respondent to provide him proper job.

4. Kritika Purohit and Anr. v. State of Maharashtra and Ors.⁶

The petitioner was a visually impaired student. She got admission for the course in Bachelor of Physiotherapy. However, she was not permitted to apply. At the end, the applicant could get the admission for the course.

Conclusion:

The aspirations of the Constitution makers reflect in directive principals and fundamental rights. The judiciary has always supportive to the law makers so as to imbibe the cultural and social changes in the traditional society like India. Social workers, reformers, culturally rich political leaders, activists and the society at large can bring equality before law for all protective groups. And thus fulfills the dream of equality of the Constitution makers.

Our aim should be to create inclusive libraries. It is suggested:

1. To conduct study how far libraries are inclusive.
2. To collect empirical data about status of differently abled persons in the area.
3. To create an awareness about inclusiveness among the library professionals.
4. To prepare a model inclusive library for all type of disabled persons.

² Case No.10571/1031/2018

³ (2013)2 SCC 772

⁴ (2010) 7 SCC 626

⁵ (2003) 4 SCC 524

⁶ Kritika Purohit and Anr. v. State of Maharashtra and Ors., W.P. 979/2010, Bombay High Court, order dated 17 November 2011, W.P. 979/2010, Bombay High Court

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7. Case No.10571/1031/2018
8. (2013)2 SCC 772
9. (2010) 7 SCC 626
10. (2003) 4 SCC 524